BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JODY ANN THOMPSON	)	
Claimant	)	
	)	
VS.	)	Docket No. 1,018,385
	)	
U.S.D. 512	)	
Self-insured Respondent	)	

ORDER

Claimant requested review of the March 27, 2006, Award entered by Administrative Law Judge Kenneth J. Hursh. The Board heard oral argument on August 29, 2006.

APPEARANCES

Douglas R. Sell, of Olathe, Kansas, appeared for the claimant. Frederick J. Greenbaum, of Kansas City, Kansas, appeared for the self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge (ALJ) found that claimant was a full time employee working a customary work week of 35 hours. Claimant earned $9.40 per hour and, accordingly, the ALJ found that claimant's preinjury gross average weekly wage was $329. The ALJ found that claimant did not prove the value of any discontinued fringe benefits. The ALJ also stated that both possible impairments in this case were contained in the AMA *Guides*[1], so he disregarded the rating of Dr. Michael Poppa, whose ratings were not based on the AMA *Guides*. The ALJ found that claimant was not entitled to an award to the body as a whole and found that claimant had a permanent partial impairment of 9 percent of the right arm based on the impairment rating of Dr. Anne Rosenthal. The ALJ also ordered

[1] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

respondent to reimburse claimant for out-of-pocket medical expenses she paid to Dr. Steven Simon. The ALJ denied claimant's request for reimbursement of bills from Town Plaza Family Practice and Stark Professional Pharmacy, and he also denied claimant's request for mileage expenses for her travel to obtain prescriptions from a pharmacy. The ALJ concluded there was no specific evidence that claimant needed future medical and made no award for future medical benefits. Nevertheless, the ALJ left open the possibility of obtaining future medical benefits post award by application and hearing.

Claimant argues that the ALJ erred in disregarding Dr. Poppa's impairment ratings. Claimant sets out as her issues:

> 1. Can an examining physician decide when the AMA *Guides* 4th Edition do not adequately address the Claimant's condition and use other sources, including his knowledge and experience to rate the Claimant's injury?
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> 2. Was it error for the Administrative Law Judge to disregard Dr. Poppa's findings where both testifying physicians reached similar diagnosis, [Claimant's wrist injury and reflex sympathetic dystrophy (RSD) were work related] but only Dr. Poppa rated Claimant for the wrist and the RSD type injury?
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> 3. Is the Administrative Law Judge competent to make a medical decision as to whether the Claimant's condition is adequately expressed in the AMA *Guides* 4th Edition.
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> 4. Nature and extent of disability including whether work disability applies.[2]

Respondent requests the ALJ's Award be affirmed as to the 9 percent impairment to the right upper extremity. Respondent also agrees with the ALJ that there was no specific evidence of claimant's future medical needs so no specific award of future medical should be made. Respondent, however, argues that claimant was a part-time employee and that her preinjury average weekly wage was therefore miscalculated. Respondent also argues that claimant is not entitled to reimbursement for her unauthorized medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant worked in the kitchen of Pawnee Elementary School as a cook, baker and server. She worked from 7 a.m. to 2 p.m. Monday through Friday and considered herself

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[2] Claimant's Board of Appeals Brief at 1-2 (filed June 7, 2006).

a full time employee. Her wage statement shows that she worked anywhere from 4.75 hours to 37.5 hours per week. The wage statement also states that her normal hours worked per week was 35.

On January 26, 2004, claimant was picking up a three-gallon bucket of soapy water, sponges, and towels. When picking it up, she swished the water around and got her hands soapy and wet. As she picked up the bucket, it started to slip and she caught it on her right thumb. Later, she went to ring out her rag and she noticed that her right wrist hurt.

Claimant was off work the next day. When she next returned to work, her right hand was bruised and her thumb was swollen. Her boss sent her to the nurse, who sent her to a doctor. The bruise and bump went away, but the swelling and the pain remained. Claimant was eventually referred to an orthopedic surgeon, Dr. Anne Rosenthal.

Claimant said that in the spring of 2004, after her injury, she had been treating with doctors and missing a lot of work. She thought she was going to be fired so requested to go to part time as a substitute cafeteria worker. She said that in April 2004, during her yearly review, her supervisor, Linda Harris, told her that she was missing too much work and if she missed any more, they were going to have to let her go. She admitted Ms. Harris did not have authority to fire her and no one from respondent took any action to terminate her. Nevertheless, she and Ms. Harris talked about the fact that if she were a substitute, she would be called in the morning and if she was not well enough to work, she could refuse the assignment and it would not be counted against her. She filled out the paperwork to transfer from full time to substituting, which was to start in August 2004. To the best of her knowledge, she was never called by respondent to substitute.

Ms. Harris testified that although she was happy with claimant's work, attendance was always a problem. Claimant's 90-day probation was extended because of her attendance. Claimant had three daughters, one of whom had health issues. She said claimant would stay home with the girls when they could not go to school since it was cheaper for her to stay home than for her husband to miss work.

Ms. Harris stated that claimant continued to be a help in the kitchen even after her injury. Claimant was put in charge of telling subs what needed to be done. Claimant would also lay out things on trays, and a sub would pick up the tray. A substitute would come in every day and work with claimant. Also, a driver picked claimant up from home and brought her to work and took her back home again.

In April 2004, Ms. Harris had a conversation with claimant about her attendance, since it was time for claimant's yearly evaluation. Ms. Harris told claimant that other than her attendance, she was doing fine. Ms. Harris said that claimant had mentioned several times that substituting was a way that attendance would not be an issue. However, she told claimant that she would lose her sick leave and would not get paid for holidays if she was a substitute.

Cyndi Weiss is the area supervisor of the food services department at respondent. Ms. Harris was a manager who worked under her. Ms. Weiss was present during a meeting with claimant where a discussion occurred regarding a change of status from a permanent employee to a substitute employee. Claimant was concerned about her absenteeism. Claimant was told to think over whether she should request a transfer. Sometime later, claimant called and said she wanted to transfer, and Ms. Weiss sent her to Debbie Miner. Claimant made the decision to transfer, as she felt that it would be better for her. When claimant transferred to substitute status, she was not guaranteed a certain number of hours a day but could work whenever she wanted to work.

Debra Miner is an area food service supervisor for respondent. One of her job duties is to call substitutes for the kitchens in the district. Ms. Miner was contacted by Ms. Weiss, who told her that claimant was considering transferring to substitute status. Ms. Weiss asked her to visit with claimant about what that entailed, which Ms. Miner did. During that visit, claimant did not mention her workers compensation claim. Ms. Miner told her that she called substitutes starting at 5:30 in the morning to ask them about work.

In July 2004, Ms. Miner placed a telephone call to claimant about working as a substitute. Ms. Miner asked whether claimant still wanted to work as a substitute, and claimant stated that she did. During August and September, Ms. Miner placed telephone calls to claimant to ask if she wanted to come in as a substitute. She got no answer any time and left voice messages. Ms. Miner said she received a message from claimant on her Code-A-Phone in which claimant requested that she not be called until January 2005. Ms. Miner called claimant four or five times in January 2005, leaving messages on claimant's answering machine, and never received a return call. She did not attempt to call claimant again until July 2005. At that time, she asked claimant if she wanted to be on the list to be a substitute for the 2005-2006 school year, and claimant said that she did want to continue to be on the substitute list. Ms. Miner tried to call claimant two times in September 2005 and again received a message from claimant on her Code-A-Phone that claimant did not want to be called until January 2006. Claimant is still on Ms. Miner's substitute list.

Amy Dillon is a classified personnel administrator for respondent. She is in charge of hiring and firing of food service personnel and stated that those personnel cannot even be reprimanded without her approval. She said claimant was never given a verbal or written reprimand that was put in her file. She may have been told that she was having too many absences as part of an evaluation. In spite of the attendance issues, no recommendations or employment action was taken against claimant. Ms. Dillon confirmed that claimant was still on the substitute list and continues to hold a position with the respondent. Ms. Miner could not say how long respondent would be prepared to accommodate claimant. But she stated that according to Ms. Harris, claimant was a valuable employee who knew how to run the kitchen, so respondent did not have an issue with making the accommodation of having her work with a substitute.

Dr. Anne Rosenthal, a board certified orthopedic hand surgeon, was one of claimant's treating physicians. She first saw claimant on March 24, 2004. Claimant complained of right wrist, thumb, and elbow pain. Claimant complained that increased use of her hand hurt her, and she also complained of popping and clicking in the wrist. Dr. Rosenthal ordered an MRI to check for a ligament tear. The MRI showed no definite tear. Dr. Rosenthal then performed arthroscopic surgery on April 29, 2004, and found a partial ligament tear of the scapholunate ligament, which she debrided. Claimant also had some damage to some cartilage. After the surgery, claimant developed sympathetic pain, in which her nerves are telling her brain and her body that she is still being injured. Dr. Rosenthal referred her to Dr. Howard Aks, who diagnosed her with RSD.

Claimant continued to see Dr. Aks and Dr. Rosenthal. Claimant told Dr. Rosenthal in June 2004 that Dr. Aks had done an epidural sympathetic block and she felt that had improved her RSD condition. In fact, Dr. Aks did a series of stellate ganglion blocks which involved injections into the neck at the C-7 level. On June 23, 2004, Dr. Rosenthal examined claimant and found she had a full range of motion in the fingers and thumb. Claimant had normal range of motion of her elbow. Dr. Rosenthal interpreted Dr. Aks' note of August 23, 2004, as indicating that claimant had no residual sympathetically mediated pain. Dr. Aks report of August 23, 2004, actually says that he thinks

> the sympathetic component of her pain has been treated and has been resolved. The residual pain that she has is–neuropathic in origin. I had mentioned to her that there is really nothing else as far as injectable therapy that could be done for her pain and recommendation is for her to continue with Dr.--for relaxation technique, and basically they taught how to deal with her pain better. She recently was started on a different antipsychotic by Dr. Hughes, Seroquel. My plan is to slowly taper her down off her narcotic requirement. We are going to be dropping her methadone to 20 mg. q.a.m. as well as nightly. She can certainly take oxycodone for breakthrough pain. I will see the patient back in 1 week's time and eventually try to get her slow on the narcotics as possible.[3]

Dr. Rosenthal last saw claimant in January 2005. At that time, claimant did not have pain to the light touch of her entire arm. She found claimant met the sedentary classification of work performance. This includes lifting and carrying of 10 pounds. She is unable to do frequent lifting, pushing, and pulling.

Using the AMA *Guides*, Dr. Rosenthal gave claimant a 9 percent permanent partial impairment of the right upper extremity. Dr. Rosenthal's scope of review was claimant's hand injury, and she admittedly did not rate her pain or her RSD. However, when she last saw claimant, claimant made no complaint of pain to any part of her body other than the right upper extremity.

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[3] Rosenthal Depo., Ex. 5 at 1.

Dr. Michael Poppa is a full-time practicing physician in occupational medicine, which involves the diagnosis and treatment of work-related injuries. He is board certified by the American Osteopathic Board of Preventative Medicine and the American Board of Independent Medical Examiners. He examined claimant at the request of claimant's attorney on February 1, 2005. Claimant told him that she has pain from the tip of her fingers up her arm to her chest and upper back. Her hand and wrist is deformed, and it has decreased strength. The pain is a burning pain, and the bones ache. She is nauseated all the time.

Dr. Poppa opined that claimant had reached maximum medical improvement of her status-post right wrist arthroscopy with debridement, her complex regional pain syndrome (RSD) and her right scapulothoracic and anterior chest wall chronic myofascitis, all of which were directly related to her work injury.

It was Dr. Poppa's opinion that claimant had a 20 percent permanent partial impairment of her right upper extremity. He consulted the AMA *Guides*, but believed it did not adequately address claimant's current condition. He did use the AMA *Guides* to convert claimant's 20 percent upper extremity permanent partial impairment to a 12 percent whole person impairment. In assessing claimant's residual impairment as a result of the RSD, Dr. Poppa utilized a physician paper from the American Association of Disability Evaluating Physicians. Utilizing the functional information contained within Class III and Class IV, Dr. Poppa rated claimant as having a 20 percent impairment of the whole person. Combining the 12 percent whole person impairment for the right upper extremity and the 20 percent whole person impairment as a result of the RSD, he rated claimant as having an overall 30 percent permanent partial impairment of the whole person.

Dr. Poppa stated that he used an alternate method of determining impairment because he thought it better took into consideration a patient's functional capabilities. He stated that the American Medical Association Guides are now in the fifth and sixth editions, and those subsequent editions have addressed the deficiencies in the fourth edition as relates to RSD.

Claimant argues it was error for the ALJ to find that Dr. Poppa's ratings should be disregarded because he did not use the 4th edition of the *Guides*.[4] The Act permits other methods for rating impairment when that impairment is not contained in the *Guides*.[5] It is uncontroverted in this record that the 4th edition of the *Guides* does not contain an "adequate" rating for RSD. Accordingly, Dr. Poppa used another edition of the *Guides*, together with another scholarly publication and medically accepted method to rate claimant.

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[4] See *Bradford v. Manhattan Mercury/Seaton Publishing Co.*, No. 210,583, 2000 WL 973232 (Kan. WCAB June 19, 2000).

[5] K.S.A. 44-510e(a).

The ALJ erred by going outside the record to consult the AMA *Guides* and make his own determination of their relevance to the claimant's conditions.[6] Nevertheless, the ALJ was correct to exclude Dr. Poppa's ratings because Dr. Poppa said the 4th edition of the *Guides* was "inadequate." He did not say that claimant's conditions were not addressed or contained within that edition of the *Guides*. Dr. Poppa is free to disagree with the treatment of claimant's condition in the 4th edition and to point out that the 4th edition is outdated and has been replaced by more current medical thinking in subsequent editions.[7] Nevertheless, the Kansas Legislature has mandated the use of the 4th edition, not the most current edition.[8]

Dr. Poppa recommended claimant avoid gripping or grasping with her right hand and carrying with her right hand and arm. She should not climb ladders or use her right arm overhead. Dr. Poppa did not have the functional capacity evaluation (FCE) performed on claimant at the time he examined her. Nevertheless, he said that if he had, his conclusions regarding restrictions would have been consistent with the FCE, although he acknowledged that claimant's symptoms would likely wax and wane and therefore a one-time FCE examination is not a good measure of claimant's true capabilities. Also, the FCE did not address gripping or grasping with the right hand. Dr. Poppa had recommended no lifting with the right hand or arm, and the FCE indicated occasional lifting up to 12 pounds from floor to waist, occasional lifting of 10 pounds from 12 inches to the waist, occasional lifting of 12 pounds from waist to shoulder, and occasional listing of 10 pounds from shoulder to overhead. The FCE also indicated that claimant could not meet the essential functions of her job duties.

After reviewing a task loss list prepared by Mary Titterington, Dr. Poppa opined that claimant was not able to perform any of the nine listed tasks. He also believed that claimant would have had a 100 percent task loss from the date of her surgery of April 29, 2004. He agreed that considering the medications claimant was taking, it would be difficult for her to access the open labor market in any capacity. Dr. Poppa noted that claimant had a preexisting bipolar disease for which she was taking Seroquel and treating with Dr. Patrick Hughes. This condition was being managed with medication before her work

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[6] See *Durham v. Cessna Aircraft Co.*, 24 Kan. App. 2d 334, 945 P.2d 8 (1997); *Roncone v. Lynn's Painting Serv.*, Docket No. 1,021,823, 2006 WL 2328076 (Kan. WCAB July 27, 2006); *Heller v. Conagra Foods*, No. 1,012,453, 2006 WL 1933429 (Kan. WCAB June 30, 2006); *McCrady v. Delphi Automotive Systems*, No. 199,358, 1998 WL 229871 (Kan. WCAB Apr. 6, 1998). But see *Rodriguez v. IBP, Inc.*, No. 85,679, unpublished Court of Appeals opinion filed June 22, 2001; *Benitez v. IBP, Inc.*, No. 190,119, 1997 WL 703747 (Kan. WCAB Oct. 24, 1997).

[7] There are even differences between printings of the 4th edition of the AMA *Guides.* The Legislature did not designate which printing is to be used. See *Keevert v. Collins Bus Corp.*, No. 1,007,129, 2005 WL 1634406 (WCAB June 8, 2005).

[8] K.S.A. 44-510d(a)(23) and K.S.A. 44-510e(a). See also *Strickland v. Feed Mercantile*, No. 86,307, unpublished Court of Appeals Opinion filed October 5, 2001.

injury, and it had not prevented her from accessing the labor market and performing her regular job duties.

Marry Titterington, a vocational rehabilitation counselor, consulted with claimant at the request of claimant's attorney on May 16, 2005. She did a job task analysis of claimant's 15-year work history before the date of her injury. She identified nine job tasks that claimant did in the course of her employment. Claimant only told her about two jobs she performed in the last 15 years. One was with the school district and one was with United Parcel Service. Claimant did not describe any job tasks she performed while working part-time for two months as a seasonal employee at Old Navy.

Ms. Titterington was not aware that respondent had attempted to accommodate claimant's restrictions. In her opinion, neither the restrictions from Dr. Rosenthal nor the restrictions from Dr. Poppa would preclude claimant from working, although Dr. Poppa's restrictions would narrow her range of work. Ms. Titterington, however, was of the opinion that given claimant's function level, the large amount of narcotic medication she was taking, and all the problems she was having, it would not be reasonable to expect any employer to hire her in the open labor market. If she ignored the medications and complaints of pain claimant was having, and the low-functioning level, and just took into account the physicians restrictions, claimant would be able to become employed. In her report, Ms. Titterington indicates that claimant would be able to perform primarily sedentary work. However, Ms. Titterington did not determine a wage loss or give an opinion concerning what wage claimant retained the ability to earn post-injury.

The Board finds the opinion of Dr. Rosenthal to be credible. While her opinion that claimant's RSD condition had been successfully treated is not entirely supported by the records of Dr. Aks, there is a lack of evidence as to claimant's true condition.[9] In addition, no physician except Dr. Poppa diagnosed claimant with myofascial pain syndrome. Likewise, only Dr. Poppa clearly found claimant's RSD condition to be unresolved. Dr. Rosenthal found claimant's permanent impairment was limited to her right upper extremity. She deferred to Dr. Aks as to the RSD condition. Unfortunately, Dr. Aks did not testify. Claimant has failed to prove a general body disability. As claimant's resulting disability is contained within the schedule of K.S.A. 44-510d, no work disability is allowed. Accordingly, the Board affirms the ALJ's award of a 9 percent permanent partial disability to the right arm based upon the rating given by Dr. Rosenthal.

The Board also agrees with and adopts the ALJ's findings and conclusions with regard to average weekly wage. Claimant was working as a full time employee of

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[9] Respondent argues in its brief that the opinions of Dr. Eubanks also support the conclusion that claimant's RSD condition had resolved. However, Dr. Eubanks did not testify, and when his report was offered by claimant at Dr. Poppa's deposition, respondent objected to the factfinder considering the opinions of non-testifying physicians. That objection is sustained and, therefore, the Board did not consider the opinions of Dr. Eubanks. Dr. Aks' reports, however, were admitted without objection at the deposition of Dr. Rosenthal.

respondent at the time of her accident with her usual and customary work week consisting of 35 hours at $9.40 per hour.

Finally, as for medical expenses, the Board modifies the ALJ's finding that reimbursement for travel to and from a pharmacy to obtain prescription medications is not available under the Act. Those travel expenses, when shown to be for prescriptions by authorized physicians and related to the work injury, are to be paid the same as travel to other types of medical treatment, such as to hospitals, doctor's offices, and physical therapists.

Claimant has obtained medical treatment from several physicians that were not expressly authorized by respondent, including Drs. Simon, Sabathy and Fisher. Respondent contends that their treatment should be treated as unauthorized medical. However, respondent ceased to provide authorized treatment in January or February 2005. Furthermore, claimant has testified that she was referred to Dr. Laurie Fisher by Dr. Aks, and this is supported by Dr. Aks's reports. Accordingly, claimant is entitled to have those expenses paid as authorized medical.

AWARD

WHEREFORE, it is the finding, decision, and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated March 27, 2006, is affirmed as to the findings of average weekly wage and that claimant has only proven a 9 percent permanent partial disability to her arm, but modified to award claimant payment of all reasonable and related medical treatment expenses, including mileage, as well as ongoing medical treatment for her chronic pain.

IT IS SO ORDERED.

Dated this _____ day of September, 2006.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

CONCURRING AND DISSENTING OPINION

The undersigned Board Members agree with the majority's conclusions concerning the claimant's average weekly wage, the approval of payment of mileage for traveling to pharmacies to obtain prescription medications, the need for ongoing medical treatment, and the payment of all reasonable and related medical treatment expenses claimant incurred after respondent discontinued providing authorized treatment. However, we disagree with the majority that claimant has failed to prove a general body disability. Moreover, we find claimant has proven that she is incapable of working seven or eight hours per day for five days a week with or without accommodation and is realistically unemployable. She is incapable of engaging in substantial gainful employment. Accordingly, she is entitled to a permanent total disability award.

No physician disputes the RSD diagnosis. What appears to be in dispute is whether claimant has been cured of the RSD. Respondent argues that she has been cured and points to certain portions of the medical record that support this contention. Dr. Rosenthal appeared to be of that opinion when she last examined claimant on January 4, 2005. This was supported by her physical examination of claimant's right arm. But Dr. Rosenthal primarily relied upon the records and reports she had received from Dr. Aks, to whom she had referred claimant for treatment of the RSD. Dr. Aks had released claimant in November 2004 as having reached maximum medical improvement. Dr. Rosenthal interpreted this to mean that Dr. Aks' treatment of claimant's RSD had been successful and the RSD condition was resolved. Dr. Aks did not testify. But a close reading of his records casts doubts upon the conclusion that claimant's RSD condition was cured and unequivocally proves that claimant continues to suffer from some type of chronic pain syndrome as a result of her work injury.

> I had the pleasure of seeing [claimant] in The Pain Clinic here at Menorah Medical Center today, 11/04/2004. She is totally off her narcotics at this time. She has no signs of withdrawal. She continues to take Neurontin 1200 mg. daily in divided doses. She does feel this is beneficial. At this time, I do believe that she has reached maximum medical improvement outside of hospital, **continue pharmacological management** in regards to Neurontin and as the last resort, **the patient cannot just live with the pain, possibly a dorsal column stimulator trial** to see if this would be beneficial for her. She has a couple of more appointments with Dr. Keeton, who was helping her to learn how to live with this **chronic intractable situation**. I again had a conversation with [claimant] as well as her mother about the importance to continue stretching utilizing the arm. We did talk about possibly finishing up with functional capacity evaluation to see if there is really much that she can do as far as employment with **this chronic intractable situation**.

> She looks very good today. She seems to have a positive attitude. I am asking her to just give me a call in about 3 to 4 months' time. I would be very curious to see how she does.[10] (Emphasis added.)

The only physician claimant saw after Dr. Rosenthal whose testimony was obtained is Dr. Poppa. His examination was conducted about one month after claimant was last seen by Dr. Rosenthal and Dr. Keenan. At that time, claimant was having symptoms of RSD. In addition, claimant was still receiving treatment. However, she had apparently begun doing so on her own and was paying for that treatment through her private health insurance. In fact, the record shows that during the course of the approximately one-year period between the date claimant was last seen by Dr. Rosenthal and the date of the regular hearing, claimant had been seen numerous times by several physicians. Except for her appointments with Dr. Hughes, claimant related all of those visits to her work-related injury and specifically to her RSD condition.

Claimant's testimony alone is sufficient evidence of her physical condition.[11] Likewise, medical evidence is not essential to the establishment of the existence, nature, and extent of an injured workers' disability.[12] Medical testimony is required to establish the percentage of functional impairment and task loss but not to establish permanent total disability.[13] At the December 22, 2005, regular hearing, claimant testified that she is in constant pain, not simply in her right arm, but she has also had flare-ups into other areas of her body, including her shoulder, neck, jaw, teeth, face, eye, and down her back to her hip and foot. Also, because the pain keeps her awake at night, she is tired and sleepy during the day. Claimant said that she went to the dentist because she thought there must be something wrong with her teeth. However, the dentist said that was from "the nerves."[14] Similarly, claimant thought that her back pain may be related to a bladder or kidney infection and she went to a doctor for that but again was told that it was from "the nerves."[15] Claimant said that her right hand continues to turn gray or purple or cold and it hurts to move the hand and arm. Claimant acknowledged that the injections from Dr. Aks gave her

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[10] Rosenthal Depo., Ex. 3.

[11] *Hardman v. City of Iola*, 219 Kan. 840, 549 P.2d 1013 (1976); *Hanson v. Logan USD 326*, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

[12] *Graff v. Trans World Airlines*, 267 Kan. 854, 983 P.2d 258 (1999); *Chinn v. Gay & Taylor, Inc.*, 219 Kan. 196, 547 P.2d 751 (1976); *Overstreet v. Mid-West Conveyor Co., Inc.*, 26 Kan. App. 2d 586, 994 P.2d 639 (1999).

[13] K.S.A. 44-510d; K.S.A. 44-510c; *Roberts v. J.C. Penney Co.*, 23 Kan. App. 2d 789, 935 P.2d 1079 (1997), *rev'd on other grounds* 263 Kan. 270, 949 P.2d 613 (1997). See *McKinney v. General Motors Corp.*, 22 Kan. App. 2d 768, 921 P.2d 257 (1996).

[14] R.H. Trans. (Dec. 22, 2005) at 13.

[15] *Id.*

some relief, but it was only temporary. "It relieved the pain for a while. And like I said, my swelling went down, I got the color back, and I got heat back in my hand."[16]

Claimant testified that when the insurance carrier stopped paying for her treatment after Dr. Aks, Dr. Rosenthal, and Dr. Keenan released her as being at maximum medical improvement, Dr. Aks recommended she continue to obtain treatment for her RSD condition and referred her to Dr. Laurie Fisher. Dr. Aks' records confirm this. Dr. Fisher subsequently referred her to Dr. Steven Simon for pain management and treatment of the RSD. It was Dr. Simon who referred claimant to Dr. Sabathy. At the time of the regular hearing, claimant was continuing to treat with Drs. Fisher, Simon, and Sabathy. She testified that she did not anticipate being released from their care and treatment anytime soon, as she had been told that there was no cure for her RSD condition. The fact claimant is seeking reimbursement from respondent for these treatments and medications is evidence of her understanding and belief that they are related to her work injury. Moreover, that was what claimant said in her testimony, and her need for ongoing medical treatment, including pharmacological management, is likewise supported by the reports issued by Dr. Aks.

Claimant testified that the doctors had tried her on numerous medications, some of which made her sick and nauseated and some of which even caused an allergic reaction. At the time of the regular hearing, claimant said she was still taking Demerol and Zanaflex. Also, a month before the regular hearing, she had gone to the hospital, Shawnee Mission Medical Center, because of an inability to take her pain medication. She was vomiting up the pain medicine. This resulted in her pain getting "out of control."[17] She therefore went to the emergency room to get medication to control the vomiting and allow her to take medicine to control her pain. Neither the records nor the bills from that hospital visit were placed into evidence. However, the record does contain bills and receipts for numerous doctor visits and prescriptions that claimant has obtained on her own since being released from the care of the physicians provided by respondent. Unfortunately, the record contains neither testimony nor medical records from those providers. Nevertheless, the exhibits to the regular hearing do show that claimant made "co-pay" payments to Pain Management Institute of Mid-America Physiatrists on October 31, November 2, and November 29, 2005. Claimant's Exhibit 2 to the regular hearing also shows that claimant filled prescriptions issued by Dr. Fisher for Oxycodone, Hydrocodon, Fentanyl, Tramadol, Ultram, Hydromorph, Gabapentin, Meperidine, and Phenadoz, during the period of March through November 2005. The Osco Drug pharmacy records show that claimant was also receiving Clonidine HCL and Promethazine from Dr. Fisher in September and October 2004 and a prescription for Oxycodone from Dr. James Scowcroft in July 2004. This was during the same time period that claimant was receiving authorized treatment and prescription medications from Dr. Aks. She filled prescriptions issued by Dr. Sarah Fischer for Valtrex

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[16] *Id.* at 16.

[17] *Id.* at 27.

in March 2005 and for Prochlorperazine in September and October 2005; prescriptions issued by Dr. Hughes for Bupropion SR, Lyrica, and Seroquel from September to December 2005; prescriptions issued by Dr. Simon for Lyrica, Tizanidine HCL, and Zanaflex from October to December 2005; and prescriptions issued by Dr. Kevin Koch for Mylanta and Metoclopramide in November 2005. These receipts also show hand-written notes indicating mileage for which claimant is seeking reimbursement.

The bills from Town Plaza Family Practice show that claimant was seen by either Dr. Laurie Fisher or Dr. Sarah Fischer on March 25, March 31, April 22, May 6, June 3, July 8, and August 8, 2005. These bills were likewise submitted to claimant's personal health insurance through her husband with a $20 co-pay from claimant. Also hand-written on those bills is the round trip mileage for each visit.

The invoice from Mid America Physiatrists shows an initial visit on September 29, 2005, with follow-ups on October 3, October 31, and November 29 with Drs. Simon and Reece, showing co-pays of between $20 and $40. And finally, claimant testified at the December 22, 2005, regular hearing that she was still on medications, including the Demerol and Zanaflex that she had taken that day. She had spoken with Dr. Fisher recently, and she was scheduled to see Dr. Sabathy "next Wednesday" and Dr. Simon a week or two after Christmas.[18] Clearly, claimant has demonstrated that her RSD condition has not been cured. Rather, as described by Dr. Aks, it is a "chronic intractable situation," and claimant is in need of ongoing and future medical treatment, including pharmacological management. Furthermore, as respondent discontinued providing medical treatment for claimant's work-related RSD condition, the treatment claimant has obtained on her own since January 2005 is appropriately ordered paid by respondent as authorized medical. In addition, mileage should be paid to claimant for travel to and from the physician's offices, clinics, and hospitals, as well as to pharmacies, at the statutory rate. And, finally, the award should also reflect that claimant is permanently and totally disabled due to chronic pain from her work-related injury.

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BOARD MEMBER

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BOARD MEMBER

c: Douglas R. Sell, Attorney for Claimant
Frederick J. Greenbaum, Attorney for Self-insured Respondent

[18] *Id.* at 25.